

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7284 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

MOHAMMAD ADAM KALVANIA

Versus

COLLECTOR

Appearance:

MR PK PAREKH for Petitioner (Absent)
MS.SIDDHI TALATI, AGP for Respondents No. 1 to 4.
MR MIHIR H. JOSHI for Respondent No.5.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/03/98

ORAL JUDGEMENT

This petition raises the question of ownership of land bearing survey no. 1855 admeasuring 3 acres 14 gunthas situated at Prabhas-patan. It is the claim of the petitioner herein that the said piece of land has been inherited by him from his ancestors and belongs to

the petitioner. In support of his contention the petitioner has produced the revenue records in form no. 7/12 for S.Y.2008 to 2011 and from the year 1958 to 1961 A.D. The petitioner claims that some time in the year 1993, the respondent authorities made an attempt to take over the possession of the land from the petitioner. The petitioner has submitted that various pieces of lands situated in the area were acquired by the State Government for the purpose of Shree Somnath Trust. However, the piece of land belonging to the petitioner was not acquired nor any compensation was paid to the predecessor in title to the petitioner. He therefore, has prayed that the respondents be restrained from taking possession of the said land from the petitioner.

The claim made by the petitioner is resisted by the respondents authorities as well as Shree Somnath Trust. One Shri M.S.Aravadia, Range Forest Officer has made an affidavit and has stated that the land survey no. 1855 was handed over to the forest department on 7.8.1953 for raising nursery. He has stated that since then the land has been in possession of the forest department. The said land therefore neither belongs to the petitioner nor it is in his possession. The respondent no.5 trust has also resisted the claim of the petitioner. In support of its claim the trust has produced a copy of the deed of settlement executed on 21.1.1950. In second schedule to the said settlement the Government lands and other landed property of private persons to be acquired for the development of Somnathji temple are listed. In the list of private property the land bearing survey no.1855 is included. The trust has also produced rojkam of taking over possession of the land acquired by the Government recorded on 25.3.1951. Along with the said rojkam there is list of lands (Page No.72 of the Paper Book). Item No.19 of the said list refers to the land survey no.1855 for which compensation of Rs.742/- had been paid to one Hasanpir Kalvania, ancestor of the petitioner. Trust has also relied upon the lease agreement under which the Government has given the lands acquired by it to the trust. The said agreement at page no.2 refers to acquisition of private owned plots of land and giving of appropriate plots in exchange of the plots acquired and of paying compensation for the said plots of lands. The land bearing survey no.1855 has been included in the first schedule thereto under the heading REVENUE SURVEY. The trust has also produced the possession receipt for handing over the land survey no.1855 to the Range Forest Officer on 7.8.1953. Annexed to the affidavit made on behalf of the trust at page nos. 87 to 105 are the revenue entries in respect of various plots

of land acquired for the purpose of the trust. Page nos. 87 to 91 are the village forms no. 7/12 in respect of the land survey no.1855. The name of the occupant is "Shree Somnath Trust". Said entry pertains to the years 1971 onwards. It is explained by the trust in its affidavit that the trust was registered as a public trust under the Bombay Public Trust Act, 1950 in or about 1964 and the necessary mutation entries in the revenue records were made thereafter. On perusal of the records referred to hereinabove there cannot be any doubt that the land survey no.1855 was acquired by the Government for the purpose of Shree Somnath Trust some time in the year 1950-51 and the compensation thereof had also been paid to the owner of the land. i.e. one Hasanpir Kalvania. Further, the petitioner has also produced the revenue records evidencing his possession from the years 1952 to 1961. The petitioner has not produced any material to evidence his ownership or possession after the year 1961. These leave no doubt that survey no.1855 has been acquired by the Government for the purpose of Shree Somnath Trust. The petitioner's claim of ownership or the possession, therefore, does not appear to be well founded and cannot be accepted. The petition is therefore dismissed. Rule is discharged. Interim relief is vacated. The petitioner shall pay the cost of this petition to respondent no.5. The cost is quantified at Rs.1500/-. Rest of the respondents shall bear their own costs.

m.m.bhatt